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PUBLIC LEGAL ASSISTANCE IN BALTIMORE CITY

By E. STEPHEN DERBY*

It is not alone the lack of money that makes a man poor. The shackles that bind to poverty are ignorance of rights, disregard of personal value as a human being, a sense of being abandoned, a conviction of despair as an object manipulated by a system. Lawyers committed to the finest traditions of the bar can speak for the inarticulate, can challenge the systems that generate the cycle of poverty, can arouse the persons of power and affluence.¹

"Equal justice" or equality before the law, regardless of economic status, is generally accepted as a desirable goal inherent in the philosophy of our legal system. Since the lawyer is the spokesman for the individual within the system, "equal justice" comes to mean, in many instances, equal opportunity to secure the advice and services of counsel. Usually those unable to afford legal services must inevitably suffer a denial of equal justice unless resort can be had to some form of public legal assistance. The problems currently facing Baltimore City in the area of public legal assistance require an examination of the existing machinery, an analysis of the nature and extent of the social need, and an expression of the approach necessary to fill whatever need is found to exist.

I. EXISTING MACHINERY

Presently, public legal assistance is available in a few situations. The courts of Maryland will offer to appoint counsel for an indigent criminal defendant once an accused actually "appears in court without counsel," but they are required to do so only if the offense charged involves a maximum sentence of death, imprisonment for more than six months, or a fine of \$500 or more.² However, an accused need not be offered the opportunity to have counsel represent him at his preliminary hearing in Municipal Court, where he may merely be ordered held over for grand jury action, since this hearing is not considered a critical stage in the proceedings against him.³

The Legal Aid Bureau generally handles non-criminal cases which do not generate a fee for individuals without significant assets whose net incomes fall within established limits.⁴ In 1960 approximately 29%

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1. Address by E. Clinton Bamberger, Jr., Director, Legal Services Program, Office of Economic Opportunity, Bar Association of Baltimore City Winter Meeting, December 15, 1965, published in *The Daily Record* (Baltimore), January 5, 1966, p. 3, col. 1. See generally Sparer, *The New Legal Aid as an Instrument of Social Change*, 1965 *ILL. L. FORUM* 57.

2. Md. R.P. 719(b).

3. *White v. State*, 227 Md. 615, 177 A.2d 877 (1962).

4. The net income guidelines, after deductions for income taxes, social security payments and Blue Cross-Blue Shield premiums, are \$40 per week for an individual and \$55 per week for a couple, plus \$9 per week for each additional dependent. Eligibility Rules of the Legal Aid Bureau, Inc. For a family of four this would be \$73 per week or \$3,796 per year after deductions, which indicates a possible gross income slightly in excess of \$4,000 per year.

of the families in Baltimore City fell into this category.⁵ Financially, the Legal Aid Bureau has been supported principally by the Community Chest.⁶ Until recently it was staffed with seven attorneys, and it had one, centrally located, downtown office in the People's Court Building which accepted applicants weekdays from 9 A.M. to 4 P.M.⁷

However, existing limitations on the staff, the financial resources, and, consequently, on the scope of operation have raised serious doubts as to whether the Legal Aid Bureau has fully satisfied the need for legal services among the poorer residents of Baltimore City.⁸ Although prior to 1966 the number of low income residents in the city had shown a marked increase since 1954,⁹ the number of applicants for Legal Aid Bureau services remained relatively constant.¹⁰ Similarly, while the number of Negro residents increased significantly,¹¹ the proportion of Negro applicants also remained relatively constant.¹²

5. In 1960, when the average household in Baltimore City contained 3.33 persons, 66,640 of 229,069 families had yearly incomes of less than \$4,000. U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, U.S. CENSUSES OF POPULATION AND HOUSING, BALTIMORE, MARYLAND: 1960 CENSUS TRACTS 15, Table P-1.

6. In 1965 Community Chest contributed \$69,074.95 of the Bureau's total income of \$82,745.08. BALTO. LEGAL AID BUREAU, INC., 1965 ANN. REP.

7. Interview With Earl L. Carey, Jr., Chief Attorney, Legal Aid Bureau, Inc., Baltimore, Maryland, July 7, 1966.

8. Without exhaustive research, it would appear that there exists a seldom invoked right of an indigent plaintiff in a civil action to have counsel appointed to help him prosecute his cause of action without charge. See 2 Hen. VII ch. 12 (1494); 23 Hen. VIII ch. 15, § 2 (1531). These statutes may be found in 1 ALEXANDER'S BRITISH STATUTES 346, 375 (Coe ed. 1912). The provision in the Maryland laws incorporating the British statutes is found in MD. CODE ANN., Declaration of Rights, art. 5 (1957).

9. Remarks of Earl L. Carey, Jr., before the Committee for the Study of Legal Aid to the Indigent of the Bar Association of Baltimore City, February 3, 1966. Indirect evidence of this increase in low income residents is revealed by the fact that on December 31, 1954, the Baltimore Department of Public Welfare was serving 15,601 cases while on December 31, 1964, it was serving 37,175 cases. [1954-1955] 21-21 BALTO., MD., DEP'T OF PUBLIC WELFARE ANN. REPS., PUBLIC WELFARE IN BALTIMORE 28; [1964] 30 BALTO., MD., DEP'T OF PUBLIC WELFARE ANN. REP., PUBLIC WELFARE — THE POOREST OF THE POOR 35.

10.	Year	Total Applicants Requesting Bureau Assistance	
	1954	-----	9,324
	1955	-----	9,352
	1960	-----	8,687
	1961	-----	8,910
	1962	-----	8,764
	1963	-----	8,976
	1964	-----	8,937
	1965	-----	8,866

1954-1956, 1960-1965 LEGAL AID BUREAU, INC., ANN. REPS. Since the Bureau serves the metropolitan area, to determine the number of applicants from Baltimore City, the totals given must be reduced by about 1,000, *e.g.*, in 1965, 7,752 of 8,856 were residents of Baltimore City. Also, approximately 1,000 applicants each year (1,096 in 1965) are found to be ineligible for Bureau services and are referred elsewhere. In addition, in 1960 the Bureau stopped including 200-250 mail inquiries each year in its totals.

11. From 1950 to 1960 the Negro population of Baltimore City increased from 225,099 to 325,589. U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, U.S. CENSUS OF POPULATION, BALTIMORE, MARYLAND: 1950-CENSUS TRACTS 7, Table 1; U.S. BUREAU OF CENSUS, *op. cit. supra* note 5. Also, Negroes earn less. In 1959 the median income for adult males in Baltimore was \$4,816, while for non-white males it was \$3,330. U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, U.S. CENSUS OF POPULATION, CHARACTER OF POPULATION, MARYLAND: 1960, pt. 22, vol. 1, pp. 22-311, 22-314.

12. Remarks of Earl L. Carey, Jr., *supra* note 9.

Despite this stability of demand for existing legal aid services, virtually every person interviewed by the Baltimore Bar Association's committee to study legal aid to the indigent¹³ saw a sizable need for additional assistance for the poor. Those interviewed differed only in defining the exact scope and nature of the need and how best to meet it.

The physical inaccessibility of the Legal Aid Bureau has been one reason the indigent have not been more severely overtaxing the services offered. The Bureau's single office with its limited hours, which did not include evening and Saturday hours, was highly inconvenient for the working poor who could not afford to be absent from their generally insecure jobs, for the elderly and for mothers with young children. However, fundamental to any understanding of the reasons underlying the inadequacies of the existing system is the realization that some of the more basic problems are psychological and that their solution requires an analysis of the attitudes of the indigent toward the law and existing apparatus such as the Legal Aid Bureau.

There is a general lack of legal sensitivity among the poor which manifests itself primarily in two ways. First, there is a general failure to recognize problems with legal overtones or the desirability of an attorney's assistance. This is at least partially attributable to lower educational levels among the poor.¹⁴ Also social workers, trained primarily to recognize and administer to the physical needs of their wards, have not adequately overcome the obstacle of legal insensitivity because they themselves are neither trained in the law nor sufficiently conscious of legal problems.¹⁵

13. Among those appearing before the committee during its public hearings from January to March, 1966 were: Mr. Harold Edelston, Executive Director, Health and Welfare Council; E. Clinton Bamberger, Jr., Director, Legal Services Program, Office of Economic Opportunity; Mr. Parren Mitchell, Executive Director, Community Action Agency; Mr. Stanley Z. Mazer, Assistant Director for Neighborhood Services, Community Action Agency; Mr. A. Eugene Chase, Chairman, Anti-Poverty Action Committee, C.O.R.E.; Mr. Walter Lively, Staff Member, U.J.O.I.N.; Robert C. Embry, Jr., settlement house legal assistance volunteer; Mrs. Juanita Jackson Mitchell, President, Maryland State Conference of N.A.A.C.P. Branches; Earl L. Carey, Jr., Chief Attorney, Legal Aid Bureau, Inc.; Mrs. Esther Lazarus, Director, Baltimore Department of Public Welfare; Judge Henry L. Rogers, People's Court of Baltimore City; Mrs. Frances Morton Froelicher, Director, Citizens' Planning and Housing Association; Chief Judge T. Barton Harrington and Judge I. Sewell Lamdin, Municipal Court of Baltimore City; Thomas P. McCarthy, Master in Chancery, Domestic Relations Division, Supreme Bench of Baltimore City; and various leaders from the city's poorer neighborhoods. Interested members of the bar were given an opportunity to express their views on February 22, 1966, and although many opposed a neighborhood law office program, all who spoke acknowledged a need for some additional legal services.

14. In 1960 in 60% of the census tracts within the "Action Area," the percentage of those twenty-five and over with eight years of education or less ranged from 67.9% to 86.2%, while the percentage for the city as a whole was 51.2%. HUMAN RENEWAL PROGRAM STEERING COMMITTEE, HEALTH AND WELFARE COUNCIL OF THE BALTIMORE AREA, A PLAN FOR ACTION ON THE PROBLEMS OF BALTIMORE'S DISADVANTAGED PEOPLE 13-15, app. A-4 (1964).

The "Action Area" is a six square mile area in the central part of the city bounded roughly on the north by North Avenue, on the west by Pulaski and Scott Streets, on the south by Fort and Warren Avenues and the Inner Harbor, and on the east by Chester Street. The area contained almost one-fourth of the city's population in 1960 and was established by the Human Renewal Program Steering Committee as the area of the city where socio-economic and health problems were most severe. *Ibid.*

15. Remarks of Mrs. Esther Lazarus, note 13 *supra*. February 9, 1966.

Second, many of these people do not know where to obtain legal assistance. Of a recent sample of Action Area¹⁶ residents only 36% had ever consulted a lawyer.¹⁷ Of the remainder, 51.6% did not know where they could obtain one. Only slightly over 3% of all those interviewed named the Legal Aid Bureau as where they had sought or would seek legal assistance. This figure tends to confirm the opinion of Mr. Carey, former Chief Attorney of the Bureau, that a serious deficiency of the Bureau has been its failure to make known sufficiently the availability of Bureau services and to persuade the poor to identify the Bureau as a source of assistance.¹⁸

Related to this latter problem is the inclination among a sizable proportion of the impoverished to reject lawyers as a source of potential help because they view the law and its institutions primarily as yokes of oppression. The only experience that many of the poor have had with lawyers or the law has occurred in the course of eviction, foreclosure and repossession proceedings. In this respect it has been suggested that the Legal Aid Bureau, although convenient for some, is poorly located in the People's Court Building which, as the source of all these legal proceedings, symbolizes to many the machinery of oppressive institutions.¹⁹ Additionally, to most of the poor, attorneys fees seem excessive. In the sample of Action Area residents almost 50% mentioned cost as a major obstacle to seeking an attorney's assistance.²⁰

To the poor the police and the processes of the criminal law represent the law in a more immediate and real sense than to those living in middle class neighborhoods. While the city-wide adult arrest rate for Baltimore in 1963 was 6.2 arrests per 100 persons, among 75% of the census tracts within the Action Area the rate ranged from 10.5 to 48.1 arrests per 100 persons. Similarly, on a city-wide basis, youths appeared in Juvenile Court at the rate of 2.7 per 100 population, while within 75% of the Action Area census tracts the rate varied from 3.7 to 7.2 per 100 population in the period from 1960 to 1962.²¹

Moreover, the poor, while frequently encountering the criminal law, seldom come to know lawyers as a part of that process. Juvenile Court is conducted informally without the benefit of court-appointed counsel.²² In Municipal Court, which disposes of most adult arrests,²³ a poor person receives the benefit of appointed counsel only if he is

16. See note 14 *supra*. The sample was taken by Sidney Hollander Associates.
17. HEALTH AND WELFARE COUNCIL OF THE BALTIMORE AREA, SURVEY OF ACTION AREA RESIDENTS 20 (1965). The percentages derived from this survey may not be precise because of the small sample of only 250 adults, including an equal number of men and women, but they do seem to be roughly accurate and they seem to support the opinions of those appearing before the Bar Association Committee, note 13 *supra*.

18. Remarks of Earl L. Carey, Jr., note 9 *supra*.

19. Remarks of Mr. Walter Lively, note 13 *supra*. January 13, 1966.

20. SURVEY OF ACTION AREA RESIDENTS, *op. cit. supra* note 17, at 21.

21. A PLAN FOR ACTION, *op. cit. supra* note 14, at pp. A-8, A-9.

22. See Moylan, *Comments on the Juvenile Court*, 25 MD. L. REV. 310 (1965).

23. In 1964 there were 62,437 arrests and only 6,475 cases were referred to the Criminal Court by the Municipal Court. 1964 BALTO., MD., POLICE DEP'T ANN. REP. 33-37.

willing to spend additional days in jail (because of his normal inability to post bail while awaiting the assignment of counsel) and if the crime charged is sufficiently serious to satisfy the statutory test. The assistance of an appointed counsel is thus made remote for the minor offender, and the lawyer, as a protector of legal rights, becomes hidden within the maze of officialdom.

Another deterrent to seeking legal assistance has been described as the distance factor.²⁴ The basic problem, however, is not that the poor are physically unable to reach Legal Aid's downtown office because of a lack of funds or the inadequacy of public transportation. The poor are mobile and able, as a group, to visit the Welfare Department Office.²⁵ The deterrent, rather, is psychological. Being poor intensifies feelings not unknown to most people. There are the fears of being rejected if one asks for help, of imposing or of being ignored and lost within the maze of bureaucratic structure because one is not sufficiently influential to command respect. When in unfamiliar surroundings, there is embarrassment over shabby or inappropriate dress, inarticulate speech or unsuitable habits. The large, unfamiliar and impersonal downtown office buildings are somewhat overwhelming in their tendency to accentuate these feelings.

The less educated poor tend to hold the lower paying, unskilled and least secure jobs, and they are the last hired and the first laid off.²⁶ The poor tend to be exploited when seeking housing,²⁷ and because of their lack of sophistication, they are exploited in their consumer purchasing.²⁸ Viewing the law as a negative force, they are reluctant to leave the security of their neighborhoods and to expend effort in what appears to them a fruitless search for assistance in an alien atmosphere.

This analysis of psychological attitudes has statistical support. The establishment of neighborhood offices greatly increased the demand for legal services in Washington, D.C. In January, 1965, the Neighborhood Legal Services Project, employing the Legal Aid Society's eligibility standard, opened its first office. By the end of the year it had opened eight offices. Although the Project limited its operation to the neighborhoods it served, in its first year of operation it handled 4,896 matters. The number of cases handled in November and December, 1965, indicate that the Project was handling matters at a yearly rate of approximately 7,200,²⁹ almost two-thirds the volume

24. Remarks of Mr. Harold Edelston, note 13 *supra*, January 10, 1966. In the sampling of Action Area residents 13% cited distance, transportation and time as a major deterrent to seeking legal assistance. SURVEY OF ACTION AREA RESIDENTS, *op. cit. supra* note 17, at 21.

25. Remarks of Mrs. Esther Lazarus, note 13 *supra*.

26. While the Baltimore male unemployment rate in 1960 was 6.7%, in almost 75% of the census tracts within the Action Area the rate ranged from 9.5% to 23.5%, and the overall male unemployment rate within the Action Area was 12%. A PLAN FOR ACTION, *op. cit. supra* note 14, at 16, app. A-2.

27. While the 1960 Census revealed some 82% of the city's housing was sound with proper plumbing, within the Action Area, where more than 75% of the housing was rental, 48% was considered unsound or without proper plumbing. *Ibid.*

28. See Caplovitz, *Consumer Problems, THE EXTENSION OF LEGAL SERVICES TO THE POOR* 61 (H.E.W. Conference Proceedings 1964).

29. Interview With Mr. John Felder, Washington, D.C., Neighborhood Legal Services Project, July 11, 1966. In November, 1965, the Project received 639 new applications for assistance and in December, 1965, it received 555.

handled by the Legal Aid Society. This growth was not at the expense of the Legal Aid Society. During 1965 the number of new cases handled by Legal Aid exceeded by 403 the new matters handled in 1964, and the total increase of cases handled, including reopened cases, was 831. Furthermore, in 1964 the Legal Aid Society's case load had increased by 3,194 to 11,478³⁰ as the result of two factors: first, the opening of a new branch, which handled 1,552 cases; and second, the publicity given the approaching opening of the Neighborhood Legal Services Project, which people associated with the Legal Aid Society.³¹ Similarly, accompanying the publicity which the various proposals for OEO funding have received in Baltimore, the number of applicants for the services of the Baltimore Legal Aid Bureau has increased by an equivalent yearly rate of close to 1,500.³² These examples persuasively demonstrate that the needy are likely to seek legal assistance in significantly greater numbers when such assistance is publicized and readily available.

II. NEED

It is possible to delineate several probable areas of need: (1) landlord-tenant difficulties; (2) consumer credit situations; (3) dealings with administrative agencies, such as the Welfare Department, the Social Security Administration and school authorities; (4) minor criminal matters, including traffic offenses, and criminal matters at preliminary stages prior to the stage for appointment of counsel; (5) juvenile causes; (6) domestic relations cases, such as divorce, support, custody and illegitimacy; and (7) certain tort situations.³³

A. LANDLORD-TENANT DIFFICULTIES

In 1964 there were 81,914 summary ejectment actions brought by private landlords in the Baltimore Peoples' Court³⁴ and of these,

30. 1957-1965 WASH., D.C., LEGAL AID SOCIETY, INC., ANN. REFS.

31. Letter From Allan Fisher, Director of The Legal Aid Society, to E. Stephen Derby, September 23, 1966.

32. By September 8, 1966, the Bureau had received more than 6,900 applications for calendar year 1966. Interview With Earl L. Carey, Jr., Chief Attorney, Legal Aid Bureau, Inc., Baltimore, September 8, 1966. Compare figures in note 10 *supra*.

33. See WALD, LAW AND POVERTY: 1965, 6-41 (Chayes and Wald ed. 1965); Carlin and Howard, *Legal Representation and Class Justice, Symposium — Group Legal Services and the Availability of Counsel*, 12 U.C.L.A. REV. 279, 381 (1965). See also *In re Community Legal Services, Inc.*, 35 U.S.L. WEEK 2017 (Pa. Ct. Comm. Pls., June 30, 1966).

34. [1964-1965] 10 MD. ADMINISTRATIVE OFFICE OF THE COURTS, ANN. REP. 79. Under the oppressively efficient summary ejectment procedure if a tenant fails to pay his rent when due on the weekend, a landlord or his agent may file a complaint on Monday praying repossession of the premises and for a judgment for the rent due and costs (\$2.00). This complaint will result in the issuance of an order to the tenant to show cause on Wednesday why the prayer should not be granted. If any part of the rent is found due and unpaid on Wednesday, the Judge "shall" order the tenant to move out within two days (Friday). If the tenant fails to comply, the landlord may have the tenant forcibly ejected at any time after the expiration of the two days, i.e., on the following Monday. The tenant's right of appeal is virtually meaningless for the impoverished because it must be noted within two days of judgment, and to stay execution by the landlord, the tenant must file a costly bond to cover all damages due the landlord or which may become due him as a result of the appeal. See MD. CODE ANN. art. 53, §§ 39N-R (Supp. 1966).

74,820 were *ex parte* proceedings. Of those tenants who do appear or whose representatives appear, only an infinitesimal number are represented by counsel; for example, of approximately 522 cases disposed of on March 19, 1966 (a number which is not unusual)³⁵ counsel appeared for the tenant in only one case.³⁶ Additionally, in 1964 there were 14,490 summary ejectment actions filed by the Housing Authority of Baltimore City of which but 702 were contested.³⁷ These tenants are virtually all poor or they would not be threatened with eviction for failure to pay their rent. Their causes may seem legally hopeless and relatively unimportant to a lawyer, but eviction or the threat of eviction can be a great burden to a poor family.

Two landlords' representatives handle 50 to 75% of the cases, freeing landlords from the burden of personal attendance in Court³⁸ and encouraging them to initiate summary ejectment proceedings automatically when rent is overdue as a painless means of protecting their financial interests. Tenants, however, must generally appear personally if they wish to resist eviction or delay the proceedings because they can seldom afford or locate a personal representative to attend in their behalf. It is perhaps even more difficult for the poor to attend a specifically designated 11 a.m. session of Rent Court than to reach the Legal Aid Bureau during any one of its limited hours. For impoverished tenants to be treated equally in Rent Court, personal representation must be available to them.

With the large volume of cases disposed of in a short period, each case receives little individual attention. Is greater attention warranted? Would tenant representation serve any worthwhile purpose? Generally, the only question under the letter of the law is whether the rent was paid when due. If not, and if the tenant is unable to make agreeable arrangements with the landlord, he may be summarily ejected.

Since each covenant of a lease, implied or actual, is considered separately, a landlord's failure to provide agreed upon services does not constitute a defense to an action for rent. A tenant's remedy is to recover in damages the diminished rental value of the property or, perhaps, if the repairs required are minor, after notice, to make the repairs and deduct the expense from the rent due.³⁹ Conceivably, the tenant might have a cause of action or counterclaim for damages;⁴⁰ or he might have to seek public enforcement of the penal provisions of the Health Code to compel the furnishing of essential services.⁴¹

35. Remarks of Chief Judge Allan W. Rhynhart from the Bench, Rent Court, March 19, 1966.

36. The total number of cases is approximate because it is based upon the author's personal observation and the significant volume handled in barely one hour makes the figure susceptible to error. Judge Rogers, note 13 *supra*, February 9, 1966, commented that there was little private legal assistance in summary rent proceedings and that Legal Aid attorneys appeared in perhaps two cases weekly.

37. ADMINISTRATIVE OFFICE OF THE COURTS, *op. cit. supra* note 34.

38. See note 36 *supra*.

39. *Biggs v. McCurley*, 76 Md. 409, 25 Atl. 466 (1892).

40. *Freedman v. Seidler*, 233 Md. 39, 194 A.2d 778 (1963).

41. See BALTO. CITY ORD. no. 902 (Signed by Mayor McKeldin on December 22, 1966) and the Rules and Regulations Governing the Hygiene of Housing adopted thereunder by the Comm'r of Health. See generally *Givner v. Comm'r of Health*, 207 Md. 184, 113 A.2d 899 (1955); Rhynhart, *Law of Landlord and Tenant*, 20 MD. L. REV. 1 (1960).

To pursue these remedies and to insist upon favorable leases, the poor need readily available legal advice which, in turn, will spread familiarity among the poor generally as to their rights and will encourage the poor to assert them.

Even if the law is presently so absolute that a lawyer seldom can "win" a case where his client has neglected to pay his rent, there are numerous ways in which an attorney might help alleviate a tenant's problems through collateral action. A lawyer's skills are uniquely appropriate for articulating a tenant's grievances, defining his problems and arranging acceptable compromises with landlords, altering unfavorable leases, checking for errors in the rent payment books, seeking correction of causes of tenant complaint including, where necessary, pressing for enforcement of the housing codes, recommending desirable changes in the law, and educating tenants as to the impropriety of certain courses of conduct, such as the withholding of rent without court protection.⁴²

Persistence is often required. Landlords may elect to pay a minor fine rather than make expensive repairs.⁴³ Even though landlords are technically liable for a \$50 fine for each day a violation continues,⁴⁴ Housing Court infrequently assesses this penalty. Of 2204 cases processed from March 1, 1965 to August 31, 1965, 797 were postponed, 629 received probation before verdict, and 309 were found not guilty, while in only 359 were any fines paid and in 13 commitment imposed in default of fine.⁴⁵

Tenants making complaints may have been threatened with, or fear, retaliatory measures by their landlords.⁴⁶ This fear could be greatly alleviated if the poor could be educated to enforce their right to 60 days' notice before the landlord can repossess the premises without cause.⁴⁷ The notice requirement amounts to a limitation on the landlord's right to raise the rent unilaterally. Nonetheless, many landlords tend to ignore this notice requirement because in most cases their demands go unchallenged, and by conceding when challenged, they lose nothing.

When cases are heard, an attorney could represent tenants now unable to appear personally. Those appearing generally fare better by having ejection delayed, by arranging future payment schedules or, occasionally, by having court costs assessed against the landlord.⁴⁸ Legitimate defenses might be raised. For instance, a landlord accepting monthly rental payment might be found to have waived his

42. Evidence that the problem of substandard housing is not a small one is indicated by the results of recent inspections of a dwelling sample of 129 residential buildings west of Pennsylvania Avenue which uncovered 1,078 housing code violations, most of which were of a serious nature. Less than 10% of these dwellings had been previously inspected. Only five conformed with code requirements. All but one were owned by absentee landlords. The Evening Sun, March 8, 1966, p. B28, col. 7.

43. See Wald, *supra* note 33; LeBlanc, *Landlord-Tenant Problems, THE EXTENSION OF LEGAL SERVICES TO THE POOR* 51 (H.E.W. Conference Proceedings 1964).

44. BALTO. CITY ORD. no. 902 (1966).

45. ADMINISTRATIVE OFFICE OF THE COURTS, *op. cit. supra* note 34, at 78.

46. Remarks of Mrs. Frances Morton Froelicher, note 13 *supra*, February 9, 1966.

47. See BALTO. CITY ORD. no. 349 (1964).

48. Personal observation, note 36 *supra*.

right to collect them weekly.⁴⁹ Perhaps ejectment could be avoided by proof of improper notice.

B. CONSUMER CREDIT

The problems of consumer purchasing among the poor are basically social, but they have many legal overtones.⁵⁰ The poor tend to lack sophistication in the purchase of consumer goods. They usually buy only in their neighborhoods and are victimized by sales of overpriced and inferior merchandise because of their failure to do comparison shopping. They often fall prey to the unethical practices of some door-to-door salesmen and are exploited through excessively burdensome consumer credit arrangements. The poor have natural proclivities to purchase status-granting and self-fulfilling luxuries. Having nothing, they tend to be overly susceptible to the pressures of advertising and salesmen who convince them they can afford items through a deferred payment plan although they lack the means to meet even such deferred obligations. Nonetheless, since some credit arrangement is usually required for any sizable purchase, including necessities, the poor are constantly overextended.

What purchasers often fail to realize is that the seller's remedy for default on a credit contract they sign is generally not limited to repossession of the item purchased, but also includes execution of their personal possessions and household effects.⁵¹ Because of the poorer quality often acquired by the unsophisticated, an item purchased, such as a television set, may cease to function before the payments have been completed. For those ultimately forced to seek welfare assistance, no special allowance, as is given for rent, food and clothing, is made for the satisfaction of previously incurred debts, even if for furniture.⁵²

The poor are in a particularly vulnerable position when they fail to meet charge account payments. Since they usually are unable to appear personally or retain counsel, they fail to contest court action. Of 12,028 contract claims filed for \$500 or less in the first ten months of 1965, only 975 were contested.⁵³ In 4,091 cases, judgment was entered *ex parte*. The remainder were disposed of outside of court. In this same period there were 1,154 attachments on judgments and 2,325 executions (*fi fa*). Often a working man is intimidated if a creditor threatens to garnish his wages, but the threat is generally without substance because of the \$100 per pay period exemption of wages from the garnishment process.⁵⁴

49. *Lombardo v. Clifford Bros. Co.*, 139 Md. 32, 114 Atl. 849 (1921). *Cf. Messal v. Merlands Club, Inc.*, 233 Md. 29, 194 A.2d 793 (1963).

50. See generally Caplovitz, note 28 *supra*; remarks of Mrs. Esther Lazarus and Mr. Harold Edelston, note 13 *supra*.

51. Many deferred payment plans offered by retailers are general debt obligations rather than installment sales contracts, and many retailers use add-on installment sales contracts, sometimes without the required notice to the buyer. See MD. CODE ANN. art. 83, § 137 (1957).

52. MD. MANUAL OF THE DEP'T OF PUBLIC WELFARE, pt. II, rule II-200-IV schedules II-200-A, B, J, K, and L.

53. ADMINISTRATIVE OFFICE OF THE COURTS, *op. cit. supra* note 34.

54. MD. CODE ANN. art. 9, § 31 (Supp. 1966).

What could an attorney do to help by representing persons who are low income credit risks? He could help to educate them generally as to the consequences and likelihood of overextending their credit and counsel them as to the foolishness of pledging furniture for a trinket. He might arrange payment compromises which would not involve execution upon necessities but would clear a debtor's credit. He could secure to clients all the rightfully available defenses to a collection action. A particular credit arrangement might be attacked under the usury or small loan laws or as an unconscionable contract under section 2-302 of the Uniform Commercial Code; an attorney might uncover a breach of some warranty on the part of the seller which would entitle the purchaser to recover or counterclaim for damages.⁵⁵

C. RELATIONS WITH ADMINISTRATIVE AGENCIES

Public administrative agencies are conceived and created to alleviate problems, but occasionally these agencies, vested with wide discretionary powers and mired in bureaucracy, become unresponsive to those whom they were designed to assist. With the escalation of the War on Poverty, administrative programs directed toward benefiting the poor will be greatly expanded. Problems of inefficiency, abuse, and conflicting priorities are bound to arise. To minimize these problems in new and existing programs, their administration must be checked by those being served through creation of effective means of criticism and of compelling responsiveness. "Rarely can this be done by consultation in advance, by meetings of citizens groups, or by formal presentation of program plans. For criticism and dissent, insights and needs arise in the context of specific situations and specific grievances."⁵⁶

Law is made not merely through legislation, but through modes of official behavior. Lawyers are uniquely trained to articulate grievances, to challenge rulings and regulations, to advocate priorities, and to expose and cure abuses. The poor, whose assistance is the primary object of the War of Poverty and existing welfare, social security and unemployment compensation programs, as well as the concurrent object of educational, sanitation, urban renewal, recreational and other administrative programs, should have access to the lawyer's skills to insure their effective and beneficial administration. It is significant that in the sample of the Action Area residents surveyed,⁵⁷ 40.8% felt they could not obtain help from the agencies which were supposed to help them, 79.8% complained of dirty streets and alleys, 51.6% of inadequate garbage and trash collection, and 50.8% of inadequate street lighting, all of which a strong administrative effort could alleviate. It is only natural that administrative agencies tend to be less responsive to the inarticulate, the unaware, and the politically impotent. The poor are subject to all of these handicaps.

55. MD. CODE ANN. art. 95B, §§ 2-313-15, 2-714-15. In April, 1966, claims of \$5,653.46 lodged against Washington Neighborhood Law Office Project clients were settled for \$2,145.65. NEIGHBORHOOD LAW OFFICE PROJECT MONTHLY STATISTICAL REPORT, April, 1966.

56. Cahn and Cahn, *The War On Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1330 (1964).

57. SURVEY OF ACTION AREA RESIDENTS, *op. cit. supra* note 17, at 12.

There are in excess of 35,000 cases being served by the Baltimore welfare program at any particular time, and the program is subject to a yearly turnover of approximately one-third.⁵⁸ Although reconsideration of cases under changed circumstances is possible⁵⁹ and machinery for appeal by aggrieved parties to the State Department of Public Welfare exists,⁶⁰ few can be expected to demand reconsideration or to appeal without the assistance of counsel, particularly since the presumption is in favor of the correctness of the administrative determination. Yet, those seeking subsistence welfare grants are the least likely to be able to retain counsel or to take the initiative in seeking the assistance of Legal Aid.⁶¹

D. CRIMINAL MATTERS

The Municipal Court, with jurisdiction over cases in which the penalties will generally not involve confinement in the penitentiary, confinement for more than 3 years in any penal institution, or a fine of more than \$1,000, and where no jury trial is desired,⁶² disposed of more than 55,000 cases in 1964.⁶³ Most defendants in Municipal Court are unrepresented and, when eligible, waive their right to counsel as well as their right to a jury trial.⁶⁴ The most common reason for waiver of counsel is that the defendant is poor. If the appointment of counsel is requested, it takes 48 hours or more, during which time the defendant remains in jail because he is unable to post bail. In felony cases, in 1962, 60% of all defendants in Maryland failed to obtain their release by posting bail.⁶⁵ It is not unheard of for an accused, who has tentatively elected to exercise his right to counsel, to realize he is being led back to jail and to change his mind, requesting immediate trial without counsel.⁶⁶

The VISTA pre-trial release program may alleviate this problem somewhat and relieve unfortunate burdens on the families of those ultimately acquitted by permitting some defendants to be released without financing a bond, but such release will be possible only for defendants considered particularly trustworthy by the VISTA volunteers who interview them. Initially, the program has been highly successful — 294 of the first 300 released appeared in court.⁶⁷ However, it seems unwise to continue to administer the program through the prosecutor's office because of the inherent conflict of interest.⁶⁸

58. [1964] 30 BALTO., MD., DEPT OF PUBLIC WELFARE ANN. REP., PUBLIC WELFARE — THE POOREST OF THE POOR 35.

59. Note 52 *supra*, at rule II-223.

60. *Id.* at rules II-200-X, II-225. See MD. CODE ANN. art. 88A, § 53 (1957).

61. See Sparer, *The Role of the Welfare Client's Lawyer, Symposium, op. cit. supra* note 33, at 361.

62. MD. CODE ANN. art. 26, §§ 109-11 (Supp. 1966).

63. 1964 BALTO., MD., POLICE DEPT ANN. REP. 33-37.

64. Personal observation, Municipal Court, Criminal Section, March 5, 1966. Of 39 defendants appearing before the court during this 2¼ hour session, only one was represented by counsel, and charges against him were dismissed.

65. SILVERSTEIN, *DEFENSE OF THE POOR IN CRIMINAL CASES IN AMERICAN STATE COURTS* 7-8, Table I (1965).

66. Personal observation, note 64 *supra*.

67. See *The Sun*, September 27, 1966, p. C24, col. 1.

68. See *The Sunday Sun*, September 4, 1966, p. 16, col. 8.

Proceedings in the Municipal Court tend to be perfunctory. The oath, charge, explanation of rights, and verdict are generally spun off so rapidly that only a person thoroughly familiar with the procedure is likely to understand what has happened. Further, it is the rare individual who understands that even if he is guilty and so pleads, a lawyer can be of vital assistance in arguing mitigation of sentence. A Municipal Court judge might alter the usual sentence where special circumstances are brought to his attention. Criminal defendants, however, are usually woefully inarticulate in voicing their innocence, mitigating circumstances, or their unique situation. A judge is consequently able to provide only uncertain protection of individual rights, regardless of how zealous and fair he may be, because he is acting with dispatch as an adjudicator on the basis of his first impression of the case and not primarily as an advocate of the defendant's most favorable stance. A Municipal Court judge must of necessity rely upon the generally unelaborated and unchallenged statement of the facts by the arresting officer, who is experienced in testifying and familiar with the elements of the crime charged and who is also naturally partial. Whether or not admissible as evidence, there is also a natural temptation for a judge to rely upon a defendant's record for confirmation of the truth of pending charges. These indicators may be valid in most cases, but they do not provide for individual exceptions.

While the ratio of acquittals to cases heard is slightly higher in the Municipal than in the Criminal Court,⁶⁹ it is perhaps indicative of the oversights which can be made in Municipal Court, where counsel is generally absent, that of 926 cases appealed and tried *de novo* in 1964, there were only 380 convictions.⁷⁰ In comparison, of the 198 criminal appeals from the Circuit Courts where defendants are virtually always represented, the Court of Appeals during the 1964 term affirmed 118 and had 24 dismissed by counsel, while only 14 were reversed.⁷¹ Also, although it may be rare to have a case dismissed at the preliminary hearing, a significant number of dismissals were recorded among the cases held over in 1964. Assuming few of these defendants were represented at the preliminary hearing, perhaps the ordeal would have terminated there if the accused had been afforded benefit of counsel.

However, it is notable that the Municipal Court is desirably efficient and generally fair. To extend the present system of appointing counsel to petty offenders would infringe upon this efficiency. More important, it would not provide most defendants with counsel because of their reluctance to exercise the right when it means additional time in jail.

It seems worthwhile instead to explore the possibility of having a salaried attorney permanently present in the police stations where the Municipal Court is held to confer with defendants individually and

69. In 1964, out of 62,437 cases in the Municipal Court, 11,486 cases were dismissed. In the Criminal Court for 1964, out of 6,252 cases, there were 794 acquittals, 96 cases dismissed by the Grand Jury, and 46 cases *nolle prossed*. 1964 BALTO., MD., POLICE DEP'T ANN. REP. 37, 42-43.

70. 1964 BALTO., MD., STATE'S ATTORNEY'S OFFICE REP. 25.

71. ADMINISTRATIVE OFFICE OF THE COURTS, *op. cit. supra* note 34, at 23.

to provide them with at least the minimal services of an advocate, for example, to explain the charges and the possible penalties, to articulate defendant's explanation and to argue in mitigation of punishment. Such an attorney could work with others on a rotating basis to lessen the danger of his becoming a mere cog in the administrative machinery.

Traffic offenses constitute another area of concern. In Traffic Court cases are handled in even more perfunctory fashion than in the Criminal Section of the Municipal Court. For example, a recent tabulation of docket entries for moving violations for three of a typical day's six sessions showed 169 cases disposed of — 73 convictions and 96 acquittals — plus 123 cases postponed, 99 warrants issued for absent defendants and 21 fines paid for a total of 391 cases.⁷² For the six months ended August 31, 1965, there were 68,096 summons issued for moving violations, 25,320 summons were paid and 38,385 cases were tried.⁷³

With cases being disposed of with such rapidity, it would seem that individual defenses might be lost without counsel to insist upon their consideration. Unlike the situation in other criminal cases, any delays necessary for the appointment or obtaining of counsel would not result in additional confinement. Also, while counsel is appointed in automobile felony cases, the consequences for those involved with lesser moving violations, *i.e.*, fines, jail sentences, and suspensions or revocations of licenses,⁷⁴ may be severe in individual cases. Typical examples of such hardship exist where the license of a defendant who is dependent on the use of an automobile in pursuit of his livelihood is suspended or where a fine is imposed on a defendant who cannot even provide his family with the necessities. These persons should be guaranteed access to the assistance of counsel if the protection of their rights is to be comparable to the protection received by those who can afford counsel.

E. JUVENILE CAUSES

Grouped under this heading are those problems dealt with by the Division for Juvenile Causes in the Circuit Court of Baltimore City, *i.e.*, delinquency, dependency and neglect, and contribution by adults to the delinquency or neglect of minors. Whether counsel should be provided in juvenile causes is a serious issue.⁷⁵ Many feel that the strengths of the juvenile court system are its dispatch, informality and flexibility, that it functions as a social agency, and that its effectiveness would be reduced with the introduction of the delays and procedural formalities which tend to accompany the efforts of attorneys. In the year ending August 31, 1965, there were 7,955 juvenile causes filed in Baltimore City, of which 4,787 involved delinquency petitions, and 7811 were terminated.⁷⁶ In the past twenty years there has been

72. The Evening Sun, March 17, 1966, p. D22, col. 6. See also The Evening Sun, March 15, 1966, p. B28, col. 3 and March 16, 1966, p. C32, col. 1.

73. ADMINISTRATIVE OFFICE OF THE COURTS, *op. cit. supra* note 34, at 78.

74. MD. CODE ANN. art. 66½, §§ 104-06, 114A, 338-40 (Supp. 1966).

75. See Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957).

76. ADMINISTRATIVE OFFICE OF THE COURTS, *op. cit. supra* note 34, at 72.

no appeal to the Maryland Court of Appeals of a decision in a cause charging juvenile delinquency.⁷⁷

Those favoring the presence of counsel in juvenile proceedings note that a delinquent may be committed to a training school, which is in essence a deprivation of his liberty; that adults may be imprisoned or fined; and that both may secure dismissal or probation, have jurisdiction waived making them subject to criminal prosecution, or appeal if aggrieved by a decree. It follows from these numerous possibilities that the assistance of counsel is required to protect an individual's rights.

On the question of whether counsel should be provided indigents in juvenile causes, however, the simple answer is that every petition filed in the Baltimore Juvenile Court is served on the juvenile and his family and advises the parent or guardian that he may employ a lawyer to represent the child.⁷⁸ If the affluent may choose to be represented by counsel and if all people should possess as nearly as possible an equal opportunity to obtain justice, indigent juveniles — and it is to be remembered that juveniles residing in the Action Area are brought before the Juvenile Court on delinquency charges at twice the city-wide rate — should also have the opportunity to be represented by counsel if their parents or guardians so choose.⁷⁹

F. DOMESTIC RELATIONS

Poverty takes its toll in deteriorating human relationships because of the attendant frustrated attempts to provide, frustrated aspirations, and loss of self-respect. Higher rates of crime and juvenile delinquency within poorer neighborhoods are only partial manifestations of this deterioration. Divorce, illegitimacy, desertion and non-support are other manifestations. Approximately one-half of those applying to the Legal Aid Bureau for assistance present problems of family law.⁸⁰ In addition to the 3,002 juvenile causes for dependency and neglect and the 1654 criminal actions for desertion filed in Baltimore City in the year ending August 31, 1965, there were 1,348 adoption petitions, 3,874 divorce actions and 4,173 paternity cases added to the equity docket.⁸¹ It seems likely that at least a proportionate number of poorer people encounter these problems. With cases tending to stem directly from a lack of economic resources, such as paternity proceedings which encompass determinations of fatherhood and maintenance and support for both legitimate and illegitimate children, it would seem that the poor would be involved in proportions greater than those of the rest of the community.

In non-support and paternity cases the parties are generally unrepresented,⁸² although indigent complainants in paternity actions are

77. Moylan, *Comments on the Juvenile Court*, 25 MD. L. REV. 310, 315 (1965).

78. *Id.* at 314 n.22.

79. The Standard Juvenile Court Act so provides. 5 NPPA J. 105 (1959).

80. 1954-65 LEGAL AID BUREAU, INC., ANN. REFS.

81. ADMINISTRATIVE OFFICE OF THE COURTS, *op. cit. supra* note 34, at 72, 60.

82. Remarks of Thomas P. MacCarthy, Master in Chancery, note 13 *supra*, February 10, 1966.

eligible for assistance from the State's Attorney⁸³ and indigent defendants for assistance from the Legal Aid Bureau. Since the Court may declare parenthood, order support and fix the sum, issue arrest warrants to compel attendance, and enforce its decrees through the use of its contempt power, which includes imprisonment,⁸⁴ defendants should have the benefit of counsel. Even if the defendant is generally in the wrong on questions of support, an attorney's advice might lead to out-of-court settlement and thus effect a desirable saving of court time.

Divorce proceedings generally require the services of an attorney and involve significant expense.⁸⁵ Since the Legal Aid Bureau's policy is not to handle divorce actions without a letter of social necessity from a social agency or clergyman or unless the spouses have been separated for five years,⁸⁶ although Maryland law requires a separation of only 18 months,⁸⁷ it seems likely the poor would be involved in fewer of these proceedings than the rest of the community. Desertion, therefore, becomes the poor man's divorce. Desertion, illegitimacy, family instability and co-habitation are encouraged and remarriage discouraged because divorce is unavailable to many without substantial delay. The stigma against these practices is thereby undercut, and there is a consequent destructive effect on moral values and family unity. Since the legislature has made a determination that divorce should be available in certain situations, this procedure should be made equally available to all by providing the poor with counsel when marital discord becomes personally intolerable.

G. TORT CLAIMS

In tort cases defendants are generally represented by an insurer or the Maryland Unsatisfied Judgment Fund, but legal services should be available for the exceptions. Plaintiffs in FELA, workman's compensation and other personal injury actions seldom lack legal assistance since their cases generate their own fees. Insurance agents, however, have attempted to obtain statements from, and to settle with, legitimate claimants before they have obtained legal advice.⁸⁸ Consequently, to acquaint all with the advisability of having counsel approve settlements and with the Lawyer's Referral Service, among other things, an educational campaign would seem desirable.

III. APPROACH NECESSARY TO FILL THE NEED

What is required if the poor are to be adequately provided with essential legal services is an office or group of offices which (1) are

83. MD. CODE ANN. art. 16, § 66C (Supp. 1966).

84. MD. CODE ANN. art. 16, §§ 66H, 66J (Supp. 1966).

85. The minimum fee recommended by the Maryland State Bar Association for an uncontested divorce is \$200. AM. JUR. 2d DESK BOOK, Doc. No. 100.5 (Supp. 1965).

86. Interview With Earl L. Carey, Jr., note 7 *supra*.

87. MD. CODE ANN. art. 16, § 24 (Supp. 1966).

88. Cf. Keeton and O'Connell, *A Basic Protection Insurance Act for Claims of Traffic Victims*, 2 HARV. J. LEGIS. 41, 42-43 (1965); 4 MOORE, FEDERAL PRACTICE ¶ 26.23 [8.-4], at 1447 (2d ed. 1963).

accessible to those in need, (2) make available comprehensive legal services, including a program of preventive law, (3) specialize in the law affecting those living in poverty, (4) are adequately staffed by full-time salaried attorneys, and (5) are capable of expansion to meet the need as it becomes apparent.

If the natural reluctance among the poor to seek assistance is to be overcome, legal services must be made even more accessible to the needy than to the more affluent who are more accustomed to employing professional help. A minimum requirement is that the office hours of the Legal Aid Bureau be extended. Furthermore, it would be desirable to have more than a single downtown office, that is, to have legal services available in the areas where the need is centered. The establishment of offices in convenient locations would encourage the use of the legal services offered by reducing the time and effort required to obtain advice, by serving as a reminder of the service, by providing familiar surroundings and by fostering trust.⁸⁹

Any program proposed to give free legal service to the indigent should include the concept of neighborhood law offices from the very outset. . . . [Because] a larger segment of our community lives in a deprived condition, not only economically, but spiritually, socially and otherwise . . . [and] harbors a long-standing distrust of attorneys and the law generally, . . . the poverty areas of our community will best be assisted by attorneys who actually go into the field. . . .⁹⁰

Beyond mere accessibility, if legal services are to be used, they must be known. An intense educational campaign should be directed at the poorer neighborhoods and at social workers to advertise the existence of the service and the situations and ways in which it might provide help.

Comprehensive legal services should be available to give the poor the dignity of legal assistance comparable to that which the more affluent can command. The objective should be to provide a "law firm for the poor" which would offer the comprehensive services a large corporation or union receives from a firm to which it pays a retainer. Such representation should include more than counsel in individual cases and court appearances. It should include the articulation of general complaints of the poor, such as those concerning deficiencies in public services. It should also include the study, proposal, and support

89. Illustrative of the use that increased accessibility of law offices encourages is the Washington experience where approximately 40% of the case load of the Legal Aid Society which is located downtown consists of family problems and only 12% of the cases involve property problems; in contrast The Neighborhood Law Offices handle only 10% domestic relations problems but nearly 50% housing and consumer problems. Divorce appears to be a sufficiently major and emotional crisis to be worth a day off from work to visit a downtown legal office. However, many other problems seem common and temporary, worth a chance to stop by an accessible, nearby office but not worth the loss of a day's work and maybe the job itself. 1957-1965 WASH., D.C., LEGAL AID SOCIETY, INC., ANN. REPS.; see, *e.g.*, NEIGHBORHOOD LEGAL OFFICES PROJECT, MONTHLY STATISTICAL REPORT, April, 1966.

90. Report of the Committee for the Study of Legal Aid to the Indigent of the Bar Association of Baltimore City, *The Daily Record* (Baltimore), April 19, 1966, p. 2, col. 3 (minority report col. 6).

of legislation as well as challenges, where necessary, to statutes, regulations, rulings and interpretations. Education must be a concomitant aspect of these services. Many legal difficulties can be attacked effectively only through a program of preventive law — educational programs to expose improvident consumer credit contracts, to explain the desirability of standard leases, to point up both unfounded and valid threats by landlords and bill collectors, to note both proper and improper legal remedies, and to stress the legal responsibilities of individuals as well as their rights. Other problems may be solved only by legislation, such as the proposals to permit payment of rent into court and to forbid reletting pending the cure of housing code violations by landlords. The poor must feel they have some way of successfully articulating grievances and proposing solutions, or some may be tempted toward civil disobedience. C.O.R.E.'s threatened rent strikes in April, 1966 are a timely example.⁹¹

A plan for comprehensive legal services should also permit assistance in minor criminal and delinquency matters. Even if it is not immediately practical to station lawyers in the Municipal Courts to assist the indigent, it should at least be possible for a concerned family member to come to a legal services office and receive assistance in locating an arrested person, in determining the nature, circumstances and penalties involved, in arranging bail, in understanding the extent of the right to counsel, and in defending minor charges in the Municipal Court.

Attorneys in legal services offices should specialize in the legal problems of poverty for reasons of efficiency and economy in handling an anticipated large volume of cases. Through specialization an attorney can gain an understanding of the problems of the poor and a knowledge of the intricacies of the administrative machinery and personnel necessary to make him an effective representative. Perhaps most important is that specialists would be in a position to check compliance with court and administrative orders and to detect and to obtain correction of common troublespots, such as unresponsive official or government agency, or a landlord repeatedly violating the housing codes.

An adequate staff of full-time and salaried attorneys is necessary to insure thorough representation. Part-time and volunteer attorneys with indigent clients would inevitably be confronted with conflicting demands upon their time by private, paying clients. Any neglect would work against the objective of equal treatment under the law and reliance upon part-time and volunteer attorneys would perpetuate the feeling among the poor that they are receiving less than a full measure of equal representation. The full-time legal services attorneys must be compensated only by salary to avoid ethical conflicts and discriminatory

91. See *The Sun*, April 6, 1966, p. C28, col. 4. These threats appeared to result from the unfavorable vote in the city legislative delegation caucus on the bill of Delegate McCourt (D. Second). This bill would have permitted rent payments to be made to the People's Court to be held in escrow pending settlement of landlord-tenant disputes over repairs and until required repairs were made. See *The Sun*, March 15, 1966, p. A10, col. 2; *The Evening Sun*, March 30, 1966, p. D6, col. 1.

treatment among indigent clients which might result if compensation were on a piecework basis.

A legal services program capable of growth requires an expandable source of funds, and the most flexible source is the federal government, specifically the Legal Services Program of the Office of Economic Opportunity. Local sources are limited. Since Baltimore City is currently facing serious financial difficulties, it is a doubtful benefactor.⁹² The Baltimore Bar Association could raise less than \$100,000 with a completely successful \$50 per year assessment of its entire membership,⁹³ and even the minimum anticipated cost of the modest proposal to expand the Legal Aid Bureau originally suggested by the Bar committee exceeded \$100,000.⁹⁴ The Community Chest is already overburdened with demands upon its resources.

By comparison ninety per cent of the cost of a legal services program may currently be underwritten by federal funds administered through OEO, and the remaining ten per cent of local support need not be cash but may be the fair market value of donated supplies, facilities or services.⁹⁵

The fear that federal funding will result in federal control which is unresponsive to local needs is unfounded. The statute requires that the program be "developed, conducted, and administered with the maximum feasible participation of residents of the areas and members of the groups served. . . ."⁹⁶ The OEO's broad and unrestrictive objectives include providing legal advice and advocacy to the impoverished, sponsoring research into the law affecting the poor, acquainting and involving the practicing bar with the program, and educating community workers and the poor as to the law.⁹⁷ OEO has made it clear that "there is no such thing as a 'standard' legal services program. Innovation is encouraged and is limited only by the ingenuity of the developers of a proposal. Individual proposals will be evaluated against the overall function of the National Program. . . ."⁹⁸ There is no federal indigency standard other than that any standard employed must cover those, and only those, in need. Nor does OEO require neighborhood "store front" offices, although the services should be accessible. Once the program is funded, OEO expects "the legal services program will have in most instances an autonomous policy-making board separate from the governing body of the community ac-

92. *E.g.*, The Remarks of Mayor McKeldin, The Sunday Sun, April 23, 1966, p. 32, col. 8.

93. In the recent, hotly contested Bar Association election, only 1,170 of 1,782 members voted. See The Sun, April 7, 1966, p. C28, col. 4.

94. Report of the Committee for the Study of Legal Aid to the Indigent, *supra* note 90, app.

95. 42 U.S.C. § 2788(a) (1964); ORGANIZATION FOR ECONOMIC OPPORTUNITY, GUIDELINES FOR LEGAL SERVICES PROGRAMS 15 (1966). Although federal funds for legal services are scheduled for reduction to fifty per cent on August 20, 1967, Congress has already extended the ninety per cent margin once. Pub. L. No. 89-253, Sec. 14(a), 79 Stat. 973 (1965). It is questionable whether Congress will permit this reduction to become effective since it is politically difficult for a legislature to refuse approval of funds for purposes which it previously supported.

96. 42 U.S.C. § 2782(a) (3) (Supp. I, 1965).

97. OEO GUIDELINES, note 95 *supra* at 2.

98. *Id.* at 4.

tion agency."⁹⁹ OEO involvement will be limited to evaluation of the program's effectiveness in light of the standards established by the local boards in their applications for original funding.

Other resources which might be tapped for future expansion are members of the bar whose services could be made available on a consulting basis in specialized cases and also law school students who could serve under part-time and summer internship programs.

It has been argued that neighborhood poverty program lawyers would become crusaders and engage in activities beyond the scope of an attorney's functions, such as organizing illegal rent strikes.¹⁰⁰ The OEO has recognized this problem in part by providing that while legal services should be available to groups of residents, they should not be available to groups which, by pooling their resources, could afford the costs of representation.¹⁰¹ Also, recommending a course of known illegal activity would presumably violate a lawyer's professional trust to uphold the law.

Neighborhood law offices should not deprive private attorneys of business. It is argued that the cases of many nonpaying clients are handled by attorney who hope they will refer paying clients. However, although it may seem to an individual attorney that he handles many cases gratuitously, these efforts are negligible when compared to the total need. Certainly, indigent clients themselves cannot pay for legal services; and if money is taken from relatives, an undesirable image of justice is presented. Educating the poor as to their rights and developing in them the habit of seeking legal assistance should increase the total amount of fee producing legal business. In addition, many poor will escape their condition and will have a natural desire to seek private, rather than public, professional assistance. Knowledge of their favorable experiences with the law may encourage their tortiously injured or more affluent friends to seek legal help.

Free neighborhood legal services should not perpetuate dependency. Welfare case figures belie such a conclusion. On December 31, 1964, the Department of Public Welfare was serving 37,175 cases in Baltimore, but during the year 13,632 cases had been closed.¹⁰² In categories where employable persons were involved, the yearly turnover was more than triple the number of cases handled at any one time. Moreover, a legal services program's goals are contrary to the concept of dependency. Its objectives are to instill within a generally outcast group the dignity and self-respect which comes from consciously possessing enforceable rights and from being expected to fulfill responsibilities equally with others under the law.

Questions arise as to whether providing neighborhood legal services may generate violations of the Canons of Professional Ethics. Those Canons most susceptible to abuse appear to be 27 (advertising), 28 (stirring up litigation), 35 (control by lay intermediaries), and

99. *Id.* at 11.

100. N.Y. Times, February 20, 1966, p. 38, col. 3. Cf. Bethel and Walker, *Et Tu, Brute!*, TENN. BAR ASS'N J. 11 (August, 1965).

101. OEO GUIDELINES, *supra* note 95, at 21.

102. [1964] 30 BALTO., MD., DEP'T OF PUBLIC WELFARE ANN. REP., PUBLIC WELFARE — THE POOREST OF THE POOR 35.

39 (client confidences). Even if the neighborhood offices are publicized, staff attorneys conduct programs to educate the poor as to their legal rights, and poor individuals are referred to the offices, violations of Canons 27, 28, and 35 are unlikely because a need for such services exists in order to promote equal justice. Pecuniary gain, a major misuse which these three canons seek to prohibit, cannot be a by-product.¹⁰³ Legal Aid attorneys would be salaried and forbidden to undertake fee generating cases or to make specific referrals. As for Canon 39, violations of client confidences to administrative personnel should pose little more of a problem than that now faced in large law firms, providing there is stringent supervision of case disposition by chief attorneys, an effort is made to assign clients to specific attorneys permanently, and the same office does not represent both parties to a dispute.¹⁰⁴

IV. PROPOSALS

Merely providing more money, attorneys and centrally located office space for the Legal Aid Bureau is unlikely ever to increase

103. *E.g.*, *Brotherhood of R.R. Trainmen v. Virginia*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415 (1963); *In re Ades*, 6 F. Supp. 467 (D. Md. 1934). The last court held that it was not improper under Canons 27 and 28 for an attorney to volunteer his services without pay at the behest of the International Labor Defense to a defendant who is needy; for example, a Negro accused of a crime of violence against a Caucasian, or where important issues are involved. In *NAACP v. Button*, *supra*, at 439-43, the Supreme Court said:

Malicious intent was of the essence of the common-law offenses of fomenting or stirring up litigation. And whatever may be or may have been true of suits against government in other countries, the exercise of our own, as in this case, of First Amendment rights to enforce constitutional rights through litigation, as a matter of law, cannot be deemed malicious. Even more modern, subtler regulations of unprofessional conduct or interference with professional relations, not involving malice, would not touch the activities at bar; regulations which reflect hostility to stirring up litigation have been aimed chiefly at those who urge recourse to the courts for private gain, serving no public interest. Hostility still exists to stirring up private litigation where it promotes the use of legal machinery to oppress: as, for example, to sow discord in a family; to expose infirmities in land titles, as by hunting up claims of adverse possession; to harass large companies through a multiplicity of small claims; or to oppress debtors as by seeking out unsatisfied judgments. For a member of the bar to participate, directly or through intermediaries, in such misuses of the legal process is conduct traditionally condemned as injurious to the public. And beyond this, for a lawyer to attempt to reap gain by urging another to engage in private litigation has also been condemned; that seems to be the import of Canon 28, which the Virginia Supreme Court of Appeals has adopted as one of its own Rules.

Objection to the intervention of a lay intermediary, who may control litigation or otherwise interfere with the rendering of legal services in a confidential relationship, also derives from the element of pecuniary gain. Fearful of dangers thought to arise from that element, the courts of several States have sustained regulations aimed at these activities. We intimate no view one way or the other as to the merits of those decisions with respect to the particular arrangements against which they are directed. It is enough that the superficial resemblance in form between those arrangements and that at bar cannot obscure the vital fact that here the entire arrangement employs constitutionally privileged means of expression to secure constitutionally guaranteed civil rights. There has been no showing of a serious danger here of professionally reprehensible conflicts of interest which rules against solicitation frequently seek to prevent. This is so partly because no monetary stakes are involved, and so there is no danger that the attorney will desert or subvert the paramount interests of his client to enrich himself or an outside sponsor. (Footnotes omitted.)

104. These are the present policies of Legal Aid Bureau, Inc., and they have not been subject to abuse. Interview With Earl L. Carey, Jr., note 7 *supra*.

patronage or to result in adequate legal services for the poor. During the interval from 1954 to 1965 the Bureau's income grew significantly, from \$46,863 to \$82,745, and the number of staff attorneys increased by one, but applications for Legal Aid services remained relatively constant.¹⁰⁵

An example of a totally unsatisfactory alternative proposal is the "Judicare" approach. Under a judicare plan an individual retains his own attorney and, if he is indigent, the attorney is reimbursed from the judicare fund pursuant to minimum fee scale. This approach does no more than provide one lawyer for one client. It fails to bring the poor into closer contact with attorneys, it is more expensive and less efficient than offices of specialized, full-time, salaried attorneys, and it fails to provide comprehensive representation.

Although the Baltimore Bar Association committee has adopted a sounder approach, its original proposal was subject to serious defects.¹⁰⁶ This proposal was to double the size of the Legal Aid Bureau, to triple the number of law students participating in the Legal Aid Clinic, to extend the Bureau's present hours to include evenings and Saturdays, to establish a part-time legal clinic at the Department of Public Welfare, to increase participation in and control of the program by the Bar Association, to increase publicity of the service, and to fund the program locally by raising an estimated additional \$107,600 to \$129,900 per year. While recognizing the need "to make legal services available to the most obvious persons who require it" by establishing a clinic at the Welfare Department, the proposal failed to suggest even a modest experiment with the neighborhood law office concept. It also failed to suggest a practical source of adequate funds for either present operation or future expansion.

Recognizing these inadequacies the Bar Association and the Legal Aid Bureau jointly sponsored a legal services program which has been approved for funding by the OEO Legal Services Program.¹⁰⁷ This compromise calls for the establishment of two additional offices of the Legal Aid Bureau, each comparable in size to the present Bureau, one to be located in the eastern portion of the Action Area and one in the western portion. Comprehensive services will be provided by full-time attorneys both in presently neglected criminal matters and in all civil matters, including Juvenile Court proceedings, dealings with government agencies, and representation of those presently incarcerated. Attorneys will be available during evening and Saturday hours. There will be an expanded Legal Aid Clinic program involving law students, and the program acknowledges the possibility of volunteer participation by members of the bar.

This program constitutes a desirable beginning, but not necessarily an ultimate solution. It provides for full-time, specialized, and comprehensive law firms for the poor. The legal services offered will be more accessible. It must be stressed, however, that the neighborhood

105. 1954-65 LEGAL AID BUREAU, INC., ANN. REPS.

106. Report of the Committee for the Study of Legal Aid to the Indigent, *supra* note 90.

107. Copies of this program are available from the Legal Aid Bureau, Inc.

"store front" office approach has not been adopted and results should not be evaluated as if it had, but the principle of decentralized offices has been recognized. These branch offices and federal funding insure the capacity for expansion based upon meaningful experience. No specific provision has been made for publicizing the program or developing educational programs in the poorer neighborhoods. The approach appears to be one of standing ready to provide services, rather than affirmatively offering them. Whether the approach offered by this program will prove adequate or will be modified remains to be seen. Similarly, whether neighborhood workers will provide sufficient liaison efforts and whether the offices will prove sufficiently accessible must wait for evaluation. The effort to provide all with legal services must receive the continuing attention of the bar.

To seek to minimize differences in the law between rich and poor is, of course, to work for the achievement of a worthy and a noble ideal. But "Equal Justice" is more than a noble sentiment; it is a concept supported by extremely practical considerations closely related to the law's function of ensuring a peaceful and orderly and harmonious society. And we often think of law as a stabilizing influence — if not the most important factor promoting stability — in our society. We must not forget and we should remind ourselves that the law promotes such stability and order not simply because it is law promulgated by authority, but, rather, because in large measure, it satisfies the reasonable expectations of those who live under it. When people's just expectations are satisfied, the law is accepted and respected, and a peaceful, orderly and harmonious society is possible. When these expectations are not fulfilled, when just grievances are not remedied, confidence in the law is diminished, people are alienated from law and society, and instability, unrest and even violence can replace order. This has been the lesson both of ancient and contemporary history. And I suppose the most reasonable expectation of any person is to have his legitimate grievance redressed.¹⁰⁸

108. Address by Justice Arthur J. Goldberg, *Equal Justice for Rich and Poor*, June 25, 1965, NATIONAL CONFERENCE ON LAW AND POVERTY 144-45 (Conference Proceedings, 1965).